

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

3

HOUSE BILL 899
Committee Substitute Favorable 4/24/97
Senate Commerce Committee Substitute Adopted 8/13/97

Short Title: Residential Prop. Disclosure Act.

(Public)

Sponsors:

Referred to:

April 8, 1997

A BILL TO BE ENTITLED
AN ACT TO MODIFY THE REQUIREMENTS FOR DISCLOSURES UPON THE
SALE OF RESIDENTIAL PROPERTIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 47E-4 reads as rewritten:

"§ 47E-4. Required disclosures.

(a) With regard to transfers described in G.S. 47E-1, the owner of the real property shall furnish to a purchaser a residential property disclosure statement. The disclosure statement shall contain the language and be in the form set forth in subsection (b) of this section.

The statement shall:

(1) Disclose those items which are required to be disclosed relative to the characteristics and condition of the property and of which the owner has actual knowledge; or

(2) State that the owner makes no representations as to the characteristics and condition of the real property or any improvements to the real property except as otherwise provided in the real estate contract.

(b) A residential property disclosure statement shall read as follows:

"RESIDENTIAL PROPERTY DISCLOSURE STATEMENT

~~NOTICE TO SELLER AND PURCHASER~~

~~The North Carolina Residential Property Disclosure Act requires the owner of residential real property consisting of 1-4 units, whenever the property is to be sold, exchanged, optioned, or purchased pursuant to a lease with option to purchase, to furnish to the purchaser a RESIDENTIAL PROPERTY DISCLOSURE STATEMENT disclosing certain conditions of the property. Certain transfers of residential property are excluded from this requirement by G.S. 47E-2, including transfers of residential property made pursuant to a lease with an option to purchase where the lessee occupies or intends to occupy the dwelling.~~

~~Property Address/Description: _____~~

~~The undersigned owner(s) of the real property described above disclose the following present conditions of the real property of which the owner(s) has actual knowledge with regard to:~~

~~1. Any abnormality or malfunctioning of the water supply or sanitary sewage disposal system:~~

~~Yes None Known No Representations~~

~~If Yes, please describe _____~~

~~2. Any damage to or abnormality of the roof, chimneys, floors, foundation, basement, or load-bearing walls, or any leak in the roof or basement:~~

~~Yes None Known No Representations~~

~~If Yes, please describe _____~~

~~3. Any abnormality or malfunctioning of the plumbing, electrical, heating, or cooling systems:~~

~~Yes None Known No Representations~~

~~If Yes, please describe _____~~

~~4. Present infestation of wood destroying insects or organisms or past infestation the damage for which has not been repaired:~~

~~Yes None Known No Representations~~

~~If Yes, please describe _____~~

~~5. The real property's violation of zoning laws, restrictive covenants or building codes; any encroachment of the real property from or to adjacent real property; or notice from any governmental agency affecting this real property:~~

~~Yes None Known No Representations~~

~~If Yes, please describe _____~~

~~6. Presence of lead based paint, asbestos, radon gas, methane gas, underground storage tank, hazardous material or toxic material (whether buried or covered):~~

~~Yes None Known No Representations~~

~~If Yes, please describe _____~~

~~The purchaser and owner may wish to obtain professional advice about, or inspections of, the real property. The owner has a duty to disclose any material inaccuracy in this statement or any material change in the real property which is discovered between the~~

1 ~~date of this statement and the closing of the transaction. The owner(s) acknowledge~~
 2 ~~having examined this statement before signing below:~~

3
 4
 5 ~~Owner Date Owner Date~~

6 ~~The purchaser(s) acknowledge receipt of a copy of this disclosure statement and further~~
 7 ~~acknowledge that they have examined it before signing below:~~

8
 9
 10 Purchaser Date Purchaser Date"

11 (b) The North Carolina Real Estate Commission shall develop and require the use
 12 of a standard disclosure statement to comply with the requirements of this section. The
 13 disclosure statement shall specify that certain transfers of residential property are
 14 excluded from this requirement by G.S. 47E-2, including transfers of residential property
 15 made pursuant to a lease with an option to purchase where the lessee occupies or intends
 16 to occupy the dwelling, and shall include at least the following characteristics and
 17 conditions of the property:

- 18 (1) The water supply and sanitary sewage disposal system;
 19 (2) The roof, chimneys, floors, foundation, basement, and other structural
 20 components and any modifications of these structural components;
 21 (3) The plumbing, electrical, heating, cooling, and other mechanical
 22 systems;
 23 (4) Present infestation of wood-destroying insects or organisms or past
 24 infestation the damage for which has not been repaired;
 25 (5) The zoning laws, restrictive covenants, building codes, and other land-
 26 use restrictions affecting the real property, any encroachment of the real
 27 property from or to adjacent real property, and notice from any
 28 governmental agency affecting this real property; and
 29 (6) Presence of lead-based paint, asbestos, radon gas, methane gas,
 30 underground storage tank, hazardous material or toxic material (whether
 31 buried or covered), and other environmental contamination.

32 The disclosure statement shall provide the owner with the option to indicate whether
 33 the owner has actual knowledge of the specified characteristics or conditions, or the
 34 owner is making no representations as to any characteristic or condition.

35 (c) The rights of the parties to a real estate contract as to conditions of the property
 36 of which the owner had no actual knowledge are not affected by this Article unless the
 37 residential disclosure statement states that the owner makes no representations as to those
 38 conditions. If the statement states that an owner makes no representations as to the
 39 conditions of the property, then the owner has no duty to disclose those conditions,
 40 whether or not the owner should have known of them."

41 Section 2. G.S. 47E-5 reads as rewritten:

42 "**§ 47E-5. Time for disclosure; cancellation of contract.**

1 (a) The owner of real property subject to this Chapter shall deliver to the purchaser
2 the ~~written disclosures~~ disclosure statement required by this Chapter no later than the time
3 ~~such~~ the purchaser makes an offer to purchase, exchange, or option the property, or
4 exercises the option to purchase the property pursuant to a lease with an option to
5 purchase. The residential property disclosure statement may be included in the real estate
6 contract, in an addendum, or in a separate document.

7 (b) If the disclosure statement required by this Chapter is not delivered to ~~such~~ the
8 purchaser ~~after~~ prior to or at the time the purchaser makes an offer, the purchaser may
9 ~~terminate~~ cancel any resulting real estate ~~contract~~ or withdraw the offer no later than three
10 ~~days after the purchaser receives the disclosure statement.~~ contract. The purchaser's right to
11 cancel shall expire if not exercised prior to the following, whichever occurs first:

- 12 (1) The end of the third calendar day following the purchaser's receipt of
13 the disclosure statement;
- 14 (2) The end of the third calendar day following the date the contract was
15 made;
- 16 (3) Settlement or occupancy by the purchaser in the case of a sale or
17 exchange; or
- 18 (4) Settlement in the case of a purchase pursuant to a lease with option to
19 purchase.

20 Any right of the purchaser to cancel the contract provided by this subsection is waived
21 conclusively if not exercised in the manner required by this subsection.

22 In order to ~~terminate~~ cancel a real estate contract when permitted by this section, the
23 purchaser shall, within the time required above, give written notice to the owner or the
24 owner's agent either by hand delivery or by depositing into the United States mail,
25 postage prepaid, and properly addressed to the owner or the owner's agent. If the
26 purchaser ~~terminates~~ cancels a real estate contract ~~or withdraws an offer~~ in compliance with
27 this subsection, the ~~termination or withdrawal of offer~~ cancellation shall be without penalty
28 to the purchaser, and the purchaser shall be entitled to a refund of any deposit ~~shall be~~
29 ~~promptly returned to the purchaser. Any rights of the purchaser to terminate the contract~~
30 ~~provided by this subsection are waived conclusively if not exercised prior to the earlier of~~
31 ~~settlement or occupancy by the purchaser in the case of a sale or exchange, or prior to settlement~~
32 ~~in the case of a purchase pursuant to a lease with option to purchase.~~ the purchaser may have
33 paid. Any rights of the purchaser to cancel or terminate the contract for reasons other
34 than those set forth in this subsection are not affected by this subsection."

35 Section 3. G.S. 47E-6 reads as rewritten:

36 "**§ 47E-6. Owner liability for disclosure of information provided by others.**

37 ~~If the owner chooses to provide a disclosure of property condition pursuant to G.S. 47E-4,~~
38 ~~the~~ The owner may discharge the duty to disclose imposed by this Chapter by providing a
39 written report attached to the residential property disclosure statement by a public agency
40 or by an engineer, land surveyor, geologist, pest control operator, contractor, home
41 inspector or other expert, dealing with matters within the scope of the public agency's
42 functions or the expert's license or expertise. The owner shall not be liable for any error,
43 inaccuracy, or omission of any information delivered pursuant to this section if the error,

1 inaccuracy, or omission was made in reasonable reliance upon the information provided
2 by the public agency or expert and the owner was not grossly negligent in obtaining the
3 information or transmitting it."

4 Section 4. G.S. 47E-8 reads as rewritten:

5 **"§ 47E-8. Agent's duty.**

6 A real estate broker or salesman acting as ~~the an agent of the owner of~~ in a residential
7 real property-estate transaction has the duty to inform ~~the owner~~ each of the clients of the
8 real estate broker or salesman of the ~~owner's~~ client's rights and obligations under this
9 Chapter. Provided the owner's real estate broker or salesman has performed this duty, the
10 broker or salesman shall not be responsible for the owner's willful refusal to provide a
11 prospective purchaser with a residential property disclosure statement. Nothing in this
12 Chapter shall be construed to conflict with, or alter, the broker or salesman's duties under
13 Chapter 93A of the General Statutes."

14 Section 5. G.S. 47E-1 reads as rewritten:

15 **"§ 47E-1. Applicability.**

16 This Chapter applies to the following transfers of residential real property consisting
17 of not less than one nor more than four dwelling units, whether or not the transaction is
18 with the assistance of a licensed real estate broker or salesman:

- 19 (1) Sale or exchange,
- 20 (2) Installment land sales contract,
- 21 (3) Option, or
- 22 (4) Lease with option to purchase, except as provided in ~~G.S. 47E-1-2(10).~~
23 G.S. 47E-2(10)."

24 Section 6. Section 1 of this act becomes effective October 1, 1998, and applies
25 to contracts entered into on or after that date. Sections 2, 3, and 4 of this act become
26 effective December 1, 1997, and apply to contracts entered into on or after that date.
27 Section 5 of this act is effective when this act becomes law. Effective when this act
28 becomes law, the North Carolina Real Estate Commission is authorized to develop the
29 standard disclosure statement under the amendments made by this act to G.S. 47E-4(b) to
30 become effective October 1, 1998.